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United States of America

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JACK PROBER,)
)
Defendant.)

Case No.: *14CR2704-BEN*

INFORMATION

The United States Attorney charges, at all times material:

SECONDARY MORTGAGE MARKET FRAMEWORK

1. In the United States, residential mortgage lenders typically sell the loans they originate to third-party investors, to the Federal National Mortgage Association (known as "Fannie Mae"), or to the Federal Home Loan Mortgage Corporation (known as "Freddie Mac"). By selling these loans, lenders reduce their credit risk and gain access to additional capital, which in turn provides borrowers with greater access to mortgage loans. This secondary mortgage market exceeds \$10 trillion, and is essential to the healthy functioning of the American housing market and the American economy.

1 2. Secondary mortgage purchasers often combine the loans they
2 purchase into what is known as collateralized mortgage obligations
3 ("CMOs") or residential mortgage-backed securities ("RMBSs"). CMOs
4 and RMBSs are then typically re-sold to institutional investors such
5 as pension funds and insurance companies. These products are then
6 also often combined into ever-more complex collateralized debt
7 obligations ("CDOs"), which may include other types of debt
8 obligations such as corporate loans.

9 3. This form of mortgage securitization provides increased
10 capital because the risk of default is, in theory, greatly reduced by
11 the aggregation of large numbers of mortgage loans, allowing even
12 high-risk individual loans to be categorized as "safe" investments
13 when they are pooled together.

14 4. As a result of the secondary market for mortgages, the
15 connection between borrowers and lenders has weakened, as loan
16 originators no longer have a direct stake in ensuring that individual
17 borrowers can repay their loans. As a result, secondary purchasers,
18 who bear the risk of default, heavily influence lending standards.
19 As mortgage loans are re-packaged and securitized, collateralized,
20 and re-sold into products seen as "safe" investments, those lending
21 standards deteriorate. The resulting complexity of mortgage
22 securities products, the lack of regulation and ratings standards,
23 and the abundance of credit availability are often cited as the
24 causes of the financial collapse of 2008.

25 BACKGROUND ALLEGATIONS

26 5. Beginning in approximately 2004, I.H. operated several San
27 Diego businesses, including Blue View (which I.H. operated with a
28 partner and the company's owner), Ocean 18 LLC, Note Tracker Corp.,

1 Nationwide Servicing Center, and Instant Mortgage Lending. At times,
2 I.H. operated these businesses along with his business associate,
3 defendant JACK PROBER ("PROBER"), and with his brother, A.H.

4 6. Through these businesses, I.H. participated in the
5 secondary mortgage market. I.H. purchased primarily distressed and
6 non-performing mortgages from primary lenders, and serviced the loans
7 by collecting payments from borrowers.

8 7. In addition to purchasing and servicing loans, I.H. pooled
9 these loans and sold shares of the pools to investors, primarily
10 friends and family, including PROBER. The investors would collect
11 returns when borrowers made monthly payments, paid off their mortgage
12 loans, or after foreclosure on the real property collateral.

13 8. In approximately 2007, at I.H.'s invitation, PROBER began
14 participating as an investor in the pooled loans purchased by I.H.'s
15 companies. PROBER also recruited additional investors, primarily his
16 own friends and family.

17 9. I.H. and his companies purchased mortgage notes from, among
18 other lenders, J.P. Morgan Chase ("Chase"), also known as Bank One;
19 and GMAC Mortgage, LLC ("GMAC"), which is now known as Ally Bank.
20 Chase and GMAC were financial institutions insured by the Federal
21 Deposit Insurance Corporation.

22 10. L.S. worked at Chase in the Residential Loan Department.
23 As part of her job, L.S. sold mortgage loans, including distressed or
24 non-performing second mortgages, to third-party investors, including
25 I.H. Chase sold the notes to the highest qualified bidder after
26 distributing lists of the loans offered for sale.

27 11. Robert Moreno ("Moreno") (charged elsewhere) worked at GMAC
28 as a Market Manager. As part of his job, Moreno sold mortgage loans,

1 including distressed or non-performing second mortgages, to third-
2 party investors, including I.H. GMAC sold the notes to the highest
3 qualified bidder after distributing lists of the loans offered for
4 sale.

5 COUNT ONE

6 18 U.S.C. § 371

7 (CONSPIRACY)

8 12. Paragraphs 1 through 11 are realleged and incorporated by
9 reference herein.

10 13. Beginning in or around 2009, and continuing through at
11 least in or around June 2013, in the Southern District of California
12 and elsewhere, defendant JACK PROBER knowingly and intentionally
13 conspired and agreed with I.H. and others to commit Bank Bribery, in
14 violation of Title 18, United States Code, Section 215, and Tax
15 Evasion, in violation of Title 26, United States Code, Section 7201.

16 Purpose of the Conspiracy

17 14. It was the purpose of the conspiracy that PROBER, I.H., and
18 others would corruptly pay hundreds of thousands of dollars in bribes
19 to L.S. and Moreno (hereinafter together, "the bankers"), which were
20 paid in cash and otherwise concealed from the Internal Revenue
21 Service ("IRS") to assist the bankers in evading federal income taxes
22 on the illicit income, and, in return, the bankers would use their
23 influence at Chase and GMAC to ensure that I.H.'s bids purchase
24 mortgage loans were accepted.

25 Manner and Means of the Conspiracy

26 15. To further the conspiracy, PROBER, I.H., and others
27 utilized the following manner and means, among others:
28

1 a. The bankers would use their positions at the banks to
2 provide I.H. with inside information about prices and competing
3 bids, in an effort to ensure that I.H.'s bids were accepted.

4 b. In return, the bankers would corruptly accept hundreds
5 of thousands of dollars in bribe payments from I.H. and his
6 associates, including PROBER, A.H., and Z.H.

7 c. PROBER, I.H., A.H., and others would arrange to pay
8 the bankers by personal check, and I.H., Z.H., and others would
9 arrange to pay the bankers in hand-delivered cash payments,
10 which the bankers would conceal from the IRS in order to evade
11 paying income taxes.

12 d. I.H. and Moreno would enter into a sham "consulting
13 agreement," in order to disguise the true nature of the bribe
14 payments and to make them appear like legitimate fees paid for
15 consulting services unrelated to Moreno's work at GMAC.

16 e. PROBER would recruit investors in part by touting
17 I.H.'s inside connections at the banks and by describing that
18 I.H. would receive information from the bankers that was not
19 available to competitors.

20 Overt Acts

21 16. In furtherance of this unlawful agreement, and to carry out
22 its objects, the following overt acts, among others, were committed
23 within the Southern District of California and elsewhere:

24 a. In or around 2009, PROBER invested money in pools of
25 mortgages purchased from Chase, knowing that I.H. had paid
26 bribes to L.S. in exchange for L.S.'s assistance in ensuring
27 that I.H.'s bids were accepted.

1 b. In or around 2012, I.H. told PROBER that he had agreed
2 with Moreno to pay "consulting fees," which PROBER understood to
3 be bribes in exchange for Moreno's assistance ensuring that
4 I.H.'s bids to purchase loans from GMAC were accepted.

5 c. In or around 2012, PROBER invested his own and his
6 investors' money in pools of mortgages purchased from GMAC, and
7 knowingly reimbursed I.H. for a portion of the bribes paid to
8 Moreno.

9 d. On or about February 23, 2012, PROBER told his
10 investors that "this month we have a unique opportunity to buy
11 loans before the other investors see the list."

12 e. In or around May 2012, I.H. asked PROBER to write
13 personal checks to Moreno, as bribe payments or "kickbacks" for
14 loans I.H. purchased from GMAC. I.H. agreed to reimburse
15 Defendant for the payments sent to Moreno.

16 f. On or about May 20, 2012, PROBER wrote a personal
17 check for \$7,000 to Moreno, drawn on PROBER's personal bank
18 account.

19 g. On or about May 25, 2012, PROBER wrote a personal
20 check for \$5,000 to Moreno, drawn on PROBER's personal bank
21 account.

22 h. On or about May 30, 2012, PROBER wrote a personal
23 check for \$7,000 to Moreno, drawn on PROBER's personal bank
24 account.

25 i. On or about June 19, 2012, PROBER told his investors
26 that they had an "opportunity to review other loan offers"
27 before finalizing a sale.
28

1 j. On or about June 20, 2012, PROBER told his investors
2 that "we will have prices on all these loans from other
3 investors by Friday/Monday. We will decide loan by loan either
4 [sic] to purchase depending on [] the going rate."

5 k. On or about July 26, 2012, PROBER wrote a personal
6 check for \$7,000 to Moreno, drawn on PROBER's personal bank
7 account.


8 l. On or about July 27, 2012, PROBER wrote a personal
9 check for \$7,000 to Moreno, drawn on PROBER's personal bank
10 account.

11 m. In or around late 2012, I.H. told PROBER that the
12 amount of money paid to Moreno was growing too large, and I.H.
13 wanted to create a "consulting agreement" with Moreno so that
14 payments made to Moreno would go to a consulting company rather
15 than Moreno directly. The "consulting agreement" was meant to
16 make the bribes appear like legitimate fees paid for consulting
17 services unrelated to Moreno's work at GMAC.

18
19 All in violation of Title 18, United States Code, Section 371.

20 DATED: 9/19/2014

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23 
24 PHILLIP L.B. HALPERN
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26 EMILY W. ALLEN
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